



Res Publica - Journal of Undergraduate Research

Volume 16 | Issue 1

Article 6

2011

Supreme Court Responsiveness: An Analysis of Individual Justice Voting Behavior and the Role of Public Opinion

Michael Browning

Illinois Wesleyan University

Recommended Citation

Browning, Michael (2011) "Supreme Court Responsiveness: An Analysis of Individual Justice Voting Behavior and the Role of Public Opinion," *Res Publica - Journal of Undergraduate Research*: Vol. 16

Available at: <http://digitalcommons.iwu.edu/respublica/vol16/iss1/6>

This Article is brought to you for free and open access by The Ames Library, the Andrew W. Mellon Center for Curricular and Faculty Development, the Office of the Provost and the Office of the President. It has been accepted for inclusion in Digital Commons @ IWU by the faculty at Illinois Wesleyan University. For more information, please contact digitalcommons@iwu.edu.

©Copyright is owned by the author of this document.

Supreme Court Responsiveness: An Analysis of Individual Justice Voting Behavior and the Role of Public Opinion

Abstract

This study attempts to explain why the Supreme Court responds to public mood by analyzing individual justice liberalism and comparing it to public liberalism between the years of 1970 and 2001. Three theories suggesting why the Court may respond to public opinion are discussed, including the replacement, political adjustment, and the attitude change hypotheses. The method of using Court reversals to determine the ideology of the Court is presented and implemented. Along with ideology and the public mood, the overall Court mood is used as an independent variable to explain the driving force behind changes in individual justices' voting behavior. The study concludes that the Court mood is the strongest and most significant factor in changes in judicial voting behavior, while public opinion and ideology explain little to none of the variance.

SUPREME COURT RESPONSIVENESS: AN ANALYSIS OF INDIVIDUAL JUSTICE VOTING BEHAVIOR AND THE ROLE OF PUBLIC OPINION

Michael Browning

***Abstract:** This study attempts to explain why the Supreme Court responds to public mood by analyzing individual justice liberalism and comparing it to public liberalism between the years of 1970 and 2001. Three theories suggesting why the Court may respond to public opinion are discussed, including the replacement, political adjustment, and the attitude change hypotheses. The method of using Court reversals to determine the ideology of the Court is presented and implemented. Along with ideology and the public mood, the overall Court mood is used as an independent variable to explain the driving force behind changes in individual justices' voting behavior. The study concludes that the Court mood is the strongest and most significant factor in changes in judicial voting behavior, while public opinion and ideology explain little to none of the variance.*

INTRODUCTION

The Supreme Court's role in American society is one of the essential parts of the checks and balances of the United States government. The lifetime tenure of justices frees them from the tyranny of public mood during election seasons and allows them to decide cases on the basis of the law rather than public preferences. In Federalist Paper No.78, Alexander Hamilton argued that if periodic instead of lifetime appointments were made, the temptation would be too great to consult popularity rather than the Constitution and the laws. In Federalist Paper No.76, Hamilton also described the Court as "the least dangerous branch" because of its inability to make laws and policies of its own. It is also arguably the least democratic branch, because it is the most independent branch. However, despite the Court's immunity from public opinion due to the process of appointments, as opposed to elections, evidence suggests the Court still regularly decides in line with public opinion. William Mishler, Reginald Sheehan¹, Kevin McGuire, and James Stimson² analyze the relationship between public opinion and the Supreme Court using Stimson's index of public mood from 1992 and 1999, respectively. In their analyses, Mishler and Sheehan find that the Supreme Court responds to public opinion at a lag of five years with an R-squared of .66, significant at the .01 level. McGuire and Stimson find a relationship at a lag of one year with an R squared of .71, significant at the .05 level. Given these data, public opinion has an influence on the Court, but because lifetime appointments separate the justices from direct accountability to public opinion, there must be other explanations as to why public opinion affects the Court.

THEORIES OF RESPONSIVENESS

To best explain how the Supreme Court might be affected by public opinion, three theories are generally used. The Dahl-Funston hypothesis, also known as "replacement hypothesis," articulates that because the president and senators' beliefs and positions are in line

¹ Mishler and Sheehan 1993; 1994; 1996.

² Stimson and McGuire 2004.

with the public mood when elected, their choices for justices are also likely to reflect that mood. Dahl argues that a president generally gets to appoint two justices for every four years spent in office, which can effectively “tip the balance on the normally divided Court.”³ Mishler and Sheehan note that this theory is consistent with the attitudinal model of judicial decision making which states that justices assume the bench with ideologies and beliefs that typically remain constant throughout their tenure.⁴

The political adjustment hypothesis is much more direct, as it states that justices might purposefully change or tweak their positions in order to bring their decisions in line with the public mood. Political adjustment suggests that justices are concerned with the enforcement of their decisions. This hypothesis is best summed up by Justice Frankfurter in *Baker v. Carr*. Frankfurter wrote “The Court’s authority – possessed of neither the purse nor the sword – ultimately rests on sustained public confidence in its moral sanction.”⁵

The “attitude change hypothesis” is the final of the standard three theories on court-public relations. It conflicts with the attitudinal model in that it specifically theorizes that a justice’s personal ideology might change in time to fit with broad and enduring changes in public opinion. Judges, like other members of society, are affected by societal norms, even if they are unaware of society’s effects on them. Mishler and Sheehan acknowledge that the attitude change hypothesis cannot reliably be tested because there are no independent measures of social change, and McGuire and Stimson do not even theorize on the matter, preferring to test the replacement and political adjustment hypotheses instead.⁶

THEORIES OF MEASURES

McGuire and Stimson set up their empirical analysis by using Stimson’s 1999 index of public mood as the independent variable and the Supreme Court’s liberalism as the dependent variable.⁷ However, they identify a unique problem with analyzing all of the Court’s cases as an indicator of the Court’s ideology, citing McGuire, Smith and Caldeira⁸ in their theory explaining why reversals provide better indicators of the Court’s ideology.

The reversal hypothesis relies on the idea that lower courts’ decisions “center around the Supreme Court’s ideal.” This idea states that because lower courts are restricted by *stare decisis*, they make decisions that attempt to reflect policy outlined in Supreme Court precedents.⁹ This “vertical *stare decisis*” causes lower court decisions to cluster around the moderate center of the Court’s known preferences. Potential litigants estimate their chances of winning given these known preferences, and decide to seek *certiorari* based on those chances. If the Supreme Court is perceived as conservative, more liberal lower court decisions will be considered too liberal for

³ Dahl 1957, quoted in Mishler and Sheehan 1996, 171.

⁴ Mishler and Sheehan 1996.

⁵ *Baker v. Carr* 1962, quoted in Mishler and Sheehan 1996, 173.

⁶ Mishler and Sheehan 1996; McGuire and Stimson 2004.

⁷ McGuire and Stimson 2004.

⁸ McGuire, Smith, and Caldeira 2004.

⁹ Songer, Segal, and Cameron 1994.

the Court. In other words, there would be more conservative petitioners making accurate (and inaccurate) estimates as to their likelihood of winning at the Supreme Court level. These accurate estimates become reversals, while the inaccurate estimates become affirmances. McGuire, Smith, and Caldiera write that “as the Court becomes more conservative, there are more liberal policies that will be reversed by the justices and fewer conservative lower court decisions that they will reject.”¹⁰ Thus the reversals, or the accurate estimates, reflect where the Court lies ideologically, while the inaccurate estimates portray an incorrect image. Tests of the reversal hypothesis reveal that when using only reversals, the Court appears to be liberal through the Warren Court and then more conservative through the Burger and Rehnquist courts, until Clinton’s appointments brought the Court back towards a moderate center. Using only affirmances showed close to the opposite, suggesting that the Warren years were very conservative years for the Court, something widely known to be untrue. The reversal model also explains 82% of the variance in the ideological composition of decisions, where the standard model using both reversals and affirmances only accounted for 70%.¹¹

McGuire and Stimson also test the reversal hypothesis. Their data support their hypothesis, showing affirmances with an R squared of .03, reversals with .60 and all cases with .57.¹² The most compelling results of their research show significantly strengthened relationships between Court composition/public opinion and the liberalism of Court outcomes when using reversals as opposed to all the cases. Given the reversal hypothesis, there is a strong argument that using both affirmances and reversals contaminates models attempting to illustrate the liberalism of Supreme Court decisions, and that previous studies of the Court may have underestimated the effect of public opinion.¹³

Another research issue concerns the response time of the Court to public opinion. Mishler and Sheehan predict a lag in the evidence of a response to public opinion in the Court’s decisions because replacing justices takes time, as does political adjustment.¹⁴ According to their theory, justices would only logically respond to enduring shifts of public opinion. Norpoth and Segal criticize the lag theory, stating that “if the Court only acts on change that has endured, their decisions should be influenced by contemporaneous as well as lagged public opinion.”¹⁵ The time lag concern is worth discussing because Mishler and Sheehan show that public opinion is “significantly and positively correlated with trends in the Court’s decisions at a lag of five years; and the relationship approaches significance at t+3 as well.”¹⁶ The absence of evidence of a lag at one year, two years, and four years may be attributed to the short length of the time series used. In reply to Norpoth and Segal’s concern that justices should be affected by contemporaneous opinion, Mishler and Sheehan respond that justices may only respond to

¹⁰ McGuire, Smith, and Caldiera 2004, 7.

¹¹ McGuire, Smith, and Caldiera 2004.

¹² McGuire and Stimson 2004.

¹³ McGuire, Smith, and Caldiera 2004, 16-17.

¹⁴ Mishler and Sheehan 1993.

¹⁵ Norpoth and Segal 1994, 712.

¹⁶ Mishler and Sheehan 1993, 92.

endurable shifts in public opinion, something that contemporaneous opinion has not yet had time to prove. They expand their theory to explain a small impact of public opinion in the first year that will “gradually increase over time before ending or leveling off at some impossible-to-predict future point.”¹⁷ Their results support this theory.

THEORIES REGARDING INDIVIDUAL JUSTICES

Mishler and Sheehan also examine the issue at an individual level. They look at Supreme Court justices in a psychological manner, reasoning that attitudes are affected by personally held beliefs, the strength of those beliefs, how they are expected to behave, and societal norms.¹⁸ Their hypothesis states that justices with more extreme ideologies will be less likely to move to the center (public opinion), while justices who are already moderate will be more likely to move one way or the other. They use yearly data from the Supreme Court Data Base from 1953 – 1992, analyzing only justices who served for 12 years or longer. Evaluating the percentage of liberal votes cast by each justice each year, they compare it to Stimson’s public mood index from 1991. Their analysis supports their hypothesis, showing “that moderate justices are more consistently responsive to fluctuations in the public mood than either liberal or conservative justices.”¹⁹

All three analyses by Mishler and Sheehan²⁰ and the analysis by McGuire and Stimson show that decisions of the Court diverge from public opinion around 1980.²¹ This could be caused by a sharp increase in liberal public mood coupled with several increasingly moderate to conservative appointments to the Supreme Court that began in the Reagan years and continued through Bush Sr., thus affecting the balance of the Court.²² This would be consistent with the replacement hypothesis as well as Mishler and Sheehan’s theory that moderate justices are the swing votes that cause the Court to follow public opinion.²³

RESEARCH QUESTION AND HYPOTHESIS

In approaching my analysis of individual Supreme Court justices, I start by questioning if Supreme Court decisions between the years of 1970 and 2001 reflect long-term public opinion trends. Given that they do, are moderate justices providing swing votes that cause Supreme Court decisions to follow public opinion?

The hypothesis stating that the Supreme Court follows public opinion due to moderate justices is based on the theories of Mishler and Sheehan that state that moderate justices are more likely to be affected and swayed by public mood than more ideologically extreme justices.

¹⁷ Mishler and Sheehan 1994, 718.

¹⁸ Mishler and Sheehan 1996.

¹⁹ *Ibid.*, 189.

²⁰ Mishler and Sheehan 1993; 1994; 1996.

²¹ McGuire and Stimson 2004.

²² Mishler and Sheehan 1993.

²³ Mishler and Sheehan 1996.

As a result, a balanced Court will appear to follow public opinion rather closely in its decisions, because the moderate justices swing the decision in the direction of the public mood.²⁴ I expect the empirical evidence between 1970 and 2001 to support the hypothesis that as the Court becomes ideologically imbalanced, its decisions will stray from public opinion.

MEASURES

Mishler and Sheehan observe the relationship between public opinion and Supreme Court decisions by individually examining each of the nine seats on the Supreme Court between 1953 and 1992. They measure each justice's ideology by doing a content analysis on newspaper editorials at the time of the justice's nomination to the Supreme Court. They code each justice as either extremely conservative (-1), moderate (0), or extremely liberal (1) and sum the scores to determine the ideological balance of the Supreme Court for each year. This method of coding efficiently identifies the ideology of the Court, but it makes a critical error by assuming that a justice's ideology stays the same throughout their tenure. Two justices within the scope of my study, Justices Blackmun and White, disprove that theory altogether. In the model, ideology scores for each justice were calculated by using a moving average of their liberalism scores from their previous three years on the Court.

Mishler and Sheehan also limit their study to justices who served a minimum of twelve years, presumably because twelve years provides a sufficient amount of time to see how the justice's ideology reflected in his or her decisions. Because of the already limited number of cases, I decided to use all justices who served between 1970 and 2001. Where multiple regression models turned up insignificant results, bivariate correlation was used as an alternate attempt at observing the relationship.

To determine the ideology of Supreme Court decisions, Mishler and Sheehan use the Supreme Court Database and calculate the percentage of liberal votes cast by the justice in question for each year.²⁵ They exclude *per curiam* opinions, memoranda, and judicial power decisions because of the difficulty in coding the ideological direction of a decision or the routine nature of these types of decisions. I will be using the Supreme Court Database, which provides the data for each justice's vote as well as the vote's ideological identification. I will also include all decisions that could be coded, as some *per curiam* opinions do have a discernable ideological direction. The database codes votes and decisions as liberal if, in criminal procedure, First Amendment, civil rights or due process cases, the vote is pro-individual, pro-affirmative action, pro-female in abortion, or pro-civil liberties, to name a few. In economics or union cases, liberal votes and decisions are pro-union, pro-debtor, anti-business, or pro-consumer, etc. Conservative votes and decisions are coded as the opposites of the liberal votes. Exact lists of coding criteria are found in the Supreme Court Database codebook.

To create a liberalism score for each justice, the votes were tallied for each year of their tenure. The total liberal votes were then divided by the total number of cases in which an

²⁴ Mishler and Sheehan 1996.

²⁵ Ibid.

ideological direction was discernable, producing a justice liberalism score for that year. The restrictions on this model were that the votes were only tallied from reversals, as they are a better indicator of a justice's ideology.²⁶

In addition to concerns about Court ideology, another measurement issue deals with the independent variable of public mood, which has proved a challenge to measure accurately throughout much of the literature. James Stimson solves this seemingly daunting task with his public mood index. His index is available on his website, and many scholars, including those cited in this study, rely on it as a dependable indicator of the liberalism of public opinion on a yearly basis.

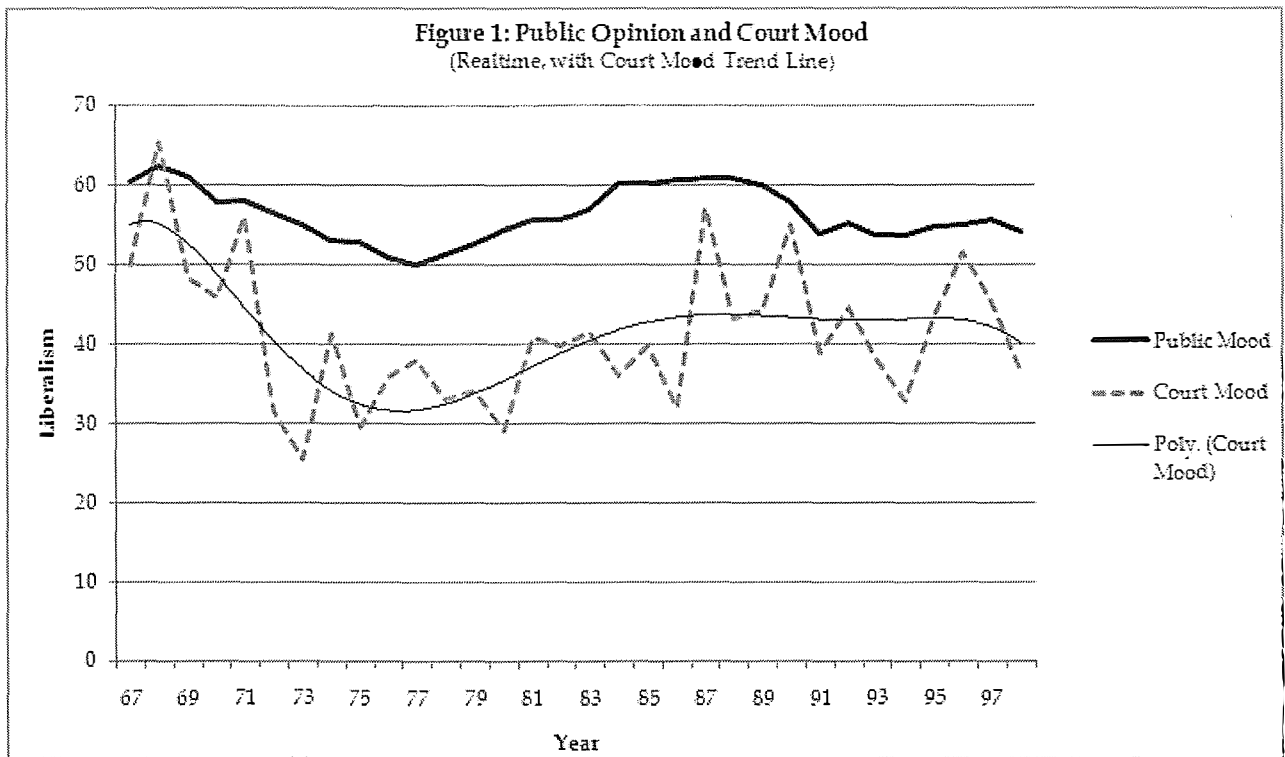
With the variables of individual justices' ideologies, the overall Court's ideology, and the public's overall political mood affecting the ideological direction of Supreme Court decisions between 1970 and 2001, the model will attempt to establish a nuanced analysis of how individual justices make their decisions. It should be noted that 2001 provides a good stopping point because Stimson's standard error on his public policy mood index gets exponentially larger in more recent years. The independent variables for each individual justice are the Court's mood, the individual justice's ideology, and the public's mood. The dependent variable is the justice's liberalism score for each year he or she served on the Court.

Table 1 below represents the overall model strength for each of the time lags considered in the study. Figure 1 graphically depicts the relationship between the Court mood and public opinion over time.

Table 1: Overall Model Strength for Time-Lagged Models

| | Realtime | Time +1 Years | Time+2 Years | Time +3 Years | Time+4 Years | Time+5 Years |
|------------------------------------|----------|------------------|-----------------|------------------|-----------------|-----------------|
| Pearson Correlation | .550 | .510 | .504 | .552 | .370 | .322 |
| Significance (2-tailed) | .001 | .003 | .003 | .001 | .037 | .072 |
| N | 32 | 32 | 32 | 32 | 32 | 32 |

²⁶ McGuire, Smith, and Caldeira 2004.



DATA ANALYSIS

In order to find the point at which justices can be expected to respond to public mood, models for the current year and five time lags were run for the entire Court mood. Bivariate correlation models show that the Court responds to public mood immediately (realtime) and also at time lags of one, two, and three years. While the four year lag was also significant, it was less so, and the five year lag did not return any significant results.

This is not surprising, as justices may be responding both to immediate public trends as well as prolonged public changes in mood, which fits with the argument of Norpoth and Segal. The study continued by focusing on realtime as well as the three year lag because they were the most statistically significant with the strongest correlations to public mood.

Models were run testing the justices' liberalism scores against public mood in realtime and at a lag of three years. The justices' ideology and the Court's overall mood were used as controls. As mentioned before, ideology was calculated using a moving average from the votes of the previous three years. This measure of ideology accounts for the theory being tested here: that justices do not make decisions based off of a solid, unchanging ideology. Instead, my ideology measure allows for a changing judicial attitude. By using an average of the previous three years, the ideology score balances out what might be considered outlier years when the docket contained uncommon numbers of certain types of cases. In the years examined, 1970 through 2001, eighty percent of cases concerned either criminal procedure, civil rights, first

amendment, economic activity, or judicial power. Of these, 22% were criminal procedure, 19% were civil rights, 9% were First Amendment, 18% were economic activity, and 13% were judicial power. This balance of law issues allows the study to accurately examine the ideology of each justice.²⁷

The purpose of the model was to find out which justices responded to public opinion, and thus affected the outcome of the Court's decisions, causing the overall Court mood to follow public opinion. The results, however, did not follow that line of logic. Very few of the justices showed any significant correlation with public opinion at all. Those who did, Justice Souter in realtime, and Justices Blackmun and Burger at a three year lag, reacted by moving away from public opinion, rather than parallel to it. In the cases of Blackmun and Burger, ideology turned out to be a strong driving force, with Betas of .758 and .395 respectively. When it comes to the moderate justice thesis, this model failed to show a strong correlation with public opinion.

Findings concerning ideology were also surprising, as this is not typically a dominant factor in justices' votes. The attitudinal model of judicial decision making states that justices make decisions based off of attitudes or ideologies that remain the same throughout their tenure. However, the results of this model tell quite a different story. After observing changes in justices' liberalism scores from year to year, the model was designed to assume that the attitudinal model was partially incorrect, instead asserting that justices' ideologies actually do change throughout their tenure. Room was made for this hypothesis by calculating the justice ideology independent variable as a moving average of previous years' votes. Even with this moving ideology variable, ideology only appeared to significantly affect Justice Blackmun's votes in realtime and T+3 (with strong Betas of .818 and .758 respectively), and Chief Justices Burger and Rehnquist in T+3 (with weaker Betas of .395 and .304, respectively). Because Justice Blackmun started his tenure conservatively in the 1970s and ended quite liberally during the 1980s, the resulting ideological shift logically accounts for the change in his voting behavior better than public mood, even though public liberalism declined during the 70s and increased during the 80s. In addition, though his voting record correlated with public mood at T+3, it did so in a negative direction (Beta of -.430). This negative correlation might exist because his shift in liberalism is actually quite a bit more dramatic than the public's, which usually tends to be slow and even. Justices Burger and Rehnquist's ideologies, on the other hand, correlate positively with their voting records. It may be possible that their role as Chief Justice has something to do with their ideologies playing into their decisions more than the other justices, but that hypothesis could only be addressed in another study.

The results show that the strongest variable affecting justice's votes was the Court's overall mood. Aside from Breyer and Souter's bivariate correlation exceptions (most likely due to their small sample sizes of years on the Court), Court mood came in as the strongest

²⁷ Further study has shown this statement to be incorrect. Data shows that justices vote with different ideologies depending on the law issue at hand. By aggregating all of the issues, this study has produced an inaccurate measure of the justices' ideologies. See 2011 research by Michael Browning for a resolution of this issue.

significant independent variables affecting each justices' votes. This is to be partly expected, as Court decisions are composed of justice's votes, but given that there are nine justices, it is noteworthy that overall Court mood is such a strong force on an individual justice's vote regardless of ideology. A likely explanation for the importance of Court mood is that as the overall mood of the Court shifts to accommodate public opinion, justices adjust their vote in order to stay relevant. This can especially be seen in the results for some of the moderate justices (who are potential swing votes) at a three year lag, namely O'Connor, Kennedy, and Powell. Burger is even surprisingly affected by the overall Court mood, suggesting that even ideologically extreme justices care about their relevance to the Court.

While the results of the model do not point to individual justices as the reason behind the Court's correlation with public opinion, they do suggest that the composition of the Court is important. However, the variance in individual justices' voting behavior contradicts parts of the attitudinal model by suggesting that justices change their votes to be in line with the overall mood of the Court. This casts some doubt on the replacement hypothesis as the sole explanation for why the Supreme Court tends to correlate with public opinion. If the replacement hypothesis affected Supreme Court voting in any significant way, we would not see much of a change in voting behavior during the 11 year period between 1994 and 2005 when the composition of the Court did not change at all. The results of this model (from 1994-2001) do not show a static Court, but instead show an almost random pattern during those years. The small sample size restricts the conclusions that can be made from this observation, but it does suggest that there is more to be explained concerning how the Supreme Court behaves as an institution. The results of this model suggest a combination of rational choices made by individual justices, while the overall Court follows the theory of political adjustment with occasional shifts that occur when justices are sometimes replaced by their ideological opposites.

Table 2: Realtime Multiple Regression Model
Dependent Variable: Individual Justices' Voting Patterns

| Model and Independent Variables | N | Adjusted. R- Square | Overall Model Sig. | Court Mood (Sig.)‡ | Ct Md. Std. Error‡ | Ideology (Sig.) | Id. Std. Error | Public Mood (Sig.) | PM Std. Error |
|---------------------------------|----|---------------------|--------------------|--------------------|--------------------|-------------------|----------------|--------------------|---------------|
| Individual Justice | | | | | | | | | |
| Marshall† | 21 | | .000 | .502* (.02) | | .162 (.451) | | .437* (.033) | |
| Stevens | 27 | .546* | .014 | .544** (.002) | .216 | .270 (.086) | .153 | .135 (.357) | .479 |
| Brennan | 23 | .375 | | .489* (.040) | .155 | -.200 (.423) | .315 | .399 (.160) | .494 |
| Breyer† | 8 | | .033 | .518 (.188) | | -.047 (.911) | | .509 (.197) | |
| Souter† | 12 | .513* | .010 | .899** (.009) | .320 | .067 (.818) | .476 | -.849* (.026) | .984 |
| Ginsburg | 9 | .807*** | .000 | .906* (.045) | .407 | -.285 (.165) | .308 | -.014 (.970) | 2.337 |
| Blackmun | 24 | .772*** | .000 | .534*** (.000) | .172 | .818*** (.000) | .149 | -.221 (.141) | .528 |
| White | 23 | .660*** | .000 | .914*** (.000) | .155 | .083 (.539) | .170 | -.203 (.207) | .388 |
| O'Connor | 21 | .723** | .003 | .853*** (.000) | .152 | -.002 (.988) | .171 | .056 (.664) | .352 |
| Kennedy | 15 | .636*** | .000 | .842*** (.000) | .172 | .076 (.667) | .370 | .058 (.741) | .449 |
| Burger | 16 | .776*** | .000 | .993*** (.000) | .167 | .183 (.313) | .268 | -.228 (.355) | .608 |
| Powell | 16 | .881** | .007 | .945*** (.000) | .125 | .247 (.142) | .158 | -.221 (.235) | .507 |
| Stewart | 11 | .717*** | .000 | .912** (.007) | .225 | -.539 (.130) | .404 | .387 (.303) | .926 |
| Rehnquist | 30 | .550** | .001 | .617*** (.000) | .170 | .219 (.110) | .176 | .115 (.422) | .423 |
| Scalia | 16 | .698* | .036 | .832*** (.000) | .160 | .251 (.112) | .300 | .210 (.171) | .389 |
| Thomas† | 11 | .548 | | .705* (.021) | .481 | -.279 (.298) | .499 | .281 (.338) | 1.408 |

* p<.05, **p<.01, ***p<.001

†Multiple Regression model insignificant, results displayed are from bivariate correlation,

‡ Variable Betas measured with Pearson Correlation; Standard Error measured with F-Test.

Table 3: Time +3 Years Multiple Regression Model

Dependent Variable: Individual Justices' Voting Patterns

| Model and Independent Variables | N | Adjusted. R- Square | Overall Model Sig. | Court Mood (Sig.)‡ | Ct Md. Std. Error‡ | Ideology (Sig.) | Id. Std. Error | Public Mood (Sig.) | PM Std. Error |
|---------------------------------|----|---------------------|--------------------|--------------------|--------------------|-------------------|----------------|--------------------|---------------|
| Individual Justice | | | | | | | | | |
| Marshall† | 21 | | | .502* (.020) | | .162 (.451) | | .092 (.692) | |
| Stevens | 27 | .563*** | .000 | .542** (.001) | .208 | .258 (.094) | .151 | .185 (.193) | .433 |
| Brennan | 23 | .293* | .036 | .594* (.032) | .179 | -.062 (.865) | .464 | .105 (.804) | .679 |
| Breyer† | 8 | | | .518 (.188) | | -.047 (.911) | | -.324 (.434) | |
| Souter† | 12 | | | .364 (.245) | | .209 (.515) | | -.464 (.129) | |
| Ginsburg | 9 | .836** | .007 | .943** (.002) | .179 | -.177 (.387) | .326 | -.179 (.391) | .524 |
| Blackmun | 24 | .868*** | .000 | .690*** (.000) | .135 | .758*** (.000) | .097 | -.430*** (.000) | .330 |
| White | 23 | .668*** | .000 | .662** (.001) | .156 | -.122 (.510) | .231 | .325 (.153) | .501 |
| O'Connor | 21 | .724*** | .000 | .844*** (.000) | .157 | -.062 (.724) | .236 | .096 (.620) | .450 |
| Kennedy | 15 | .652** | .002 | .792** (.001) | .183 | .016 (.925) | .363 | .143 (.440) | .489 |
| Burger | 16 | .855*** | .000 | 1.08*** (.000) | .117 | .395* (.026) | .240 | -.523** (.016) | .380 |
| Powell | 16 | .867*** | .000 | .867*** (.000) | .119 | .070 (.732) | .199 | .051 (.797) | .449 |
| Stewart | 11 | .668* | .013 | 1.02** (.005) | .236 | -.299 (.335) | .371 | .021 (.946) | .953 |
| Rehnquist | 30 | .562*** | .000 | .721*** (.000) | .165 | .304* (.039) | .186 | -.177 (.247) | .408 |
| Scalia | 16 | .645** | .001 | .853** (.001) | .203 | .242 (.241) | .402 | .036 (.864) | .556 |
| Thomas† | 11 | | | .783** (.004) | | -.026 (.940) | | .031 (.927) | |

*p<.05, **p<.01, ***p<.001

†Multiple Regression model insignificant, results displayed are from bivariate correlation,

‡ Variable Betas measured with Pearson Correlation; Standard Error measured with F-Test.

CONCLUSIONS

While this study failed to explain the reason that the Supreme Court follows public mood, it did bring to light a reason why it does not. Given the results of this study, it can be asserted that moderate justices are no more likely to heed public mood than extreme ideological justices, or that extreme ideological justices may pay attention to public opinion in a negative way (see Burger, T+3). What remains to be seen is how the Supreme Court follows public opinion overall without any of the individual justices being significantly affected by the public mood. Several explanations exist, including the possibility that while none of the justices are significantly affected, there is enough variation in the group that the seemingly random back and forth movements of the justices actually amount to an adherence to public mood. Yet another possibility is that the cases and votes in this study were not broken down by issue.²⁸ Some justices' ideologies can change significantly depending on the issue, and a more careful study may show that some individual justices actually do follow public opinion on certain issues that are important to the American public. Finally, this study was restricted by a small number of cases, and while the liberalism scores for each justice are seemingly accurate, the number of years for some justices on the bench were simply too few to study. Despite these limitations, this study achieved significant results and was able to verify that the overall mood of the Court is a powerful factor in judicial decision making. Further research into voting blocks, as well as Court leadership and swing voting, may reveal why the Supreme Court correlates strongly with the overall public mood and whether or not it falls in line with the political adjustment hypothesis.

²⁸ See author's 2011 work for testing of this hypothesis.

WORKS CITED

- Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. Washington, D.C.: Congressional Quarterly Inc.
- Erikson, Robert S., Mackuen, Michael B., and James A. Stimson. 2002. *The Macro Polity*. Cambridge, UK: Cambridge University Press.
- Marshall, Thomas R. 2008. *Public Opinion and the Rehnquist Court*. Albany, NY: State University of New York Press.
- McGuire, Kevin T., and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *The Journal of Politics* 66(4): 1018-1035.
- Mishler, William, and Reginald S. Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *The Journal of Politics* 58(1): 169-200.
- Norpoth, Helmut, and Jeffrey Segal; Mishler, William, and Reginald S. Sheehan. 1994. "Popular Influence on Supreme Court Decisions." *The American Political Science Review* 88(3): 711-724.
- Stimson, James A. 1991. *Public Opinion in America*. Boulder, CO: Westview Press, Inc.
- Supreme Court Database. "2010 Release 02," Released August 26, 2010.
1993. "The Supreme Court as a Countermajoritarian Institution? the Impact of Public Opinion on Supreme Court Decisions." *The American Political Science Review* 87(1): 87-101.
- Updated from James A. Stimson. 1999. *Public Opinion in America: Moods, Cycles, and Swings*. 2nd Ed. Boulder: WestviewPress.